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U.S. DISTRICT COURT

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TX EASTERN-BEAUMONT

BY Beverly Ewing

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

**CHARLES THURMOND, and
HAL LAPRAY,
Plaintiffs,
On Behalf of Themselves and All
Others Similarly Situated.**

v.

**COMPAQ COMPUTER
CORPORATION
Defendant.**

**1:99CV0711 (TH)
JURY**

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Before this Court is *Compaq's Motion for Summary Judgment on Plaintiffs' Breach of Warranty Claims* [16]. Having considered the motion, the response, the reply to the response, and the arguments of counsel presented at the February 28, 2000 hearing, this Court DENIES *Compaq's Motion for Summary Judgment on Plaintiffs' Breach of Warranty Claims* [16], subject to its re-urging at a later date.

This Court finds that summary judgment is improper at this juncture, particularly since Defendant Compaq Computer Corporation has unilaterally decided not to participate in any

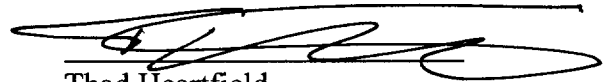
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discovery in direct contravention to this Court's Local Rule CV-26. Well, summary judgment is proper only when, after a reasonable period for discovery, one party is unable to show a genuine issue as to a material fact on which he will bear the burden of proof at trial, provided that judgment against him is appropriate as a matter of law. Nebraska v. Wyoming, 507 U.S. 584, 589, 113 S.Ct. 1689, 1694, 123 L.Ed.2d 317 (1993); Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2548, 91 L.Ed.2d 265 (1986). Thus far, due to Defendant Compaq Computer Corporation's recalcitrance to this Court mandatory disclosure obligations under Local Rule CV-26, there has not been a reasonable period of discovery. So, how could there have been a reasonable time for discovery *when no discovery has taken place*? Easy, there couldn't have been.¹

Accordingly, this Court DENIES *Compaq's Motion for Summary Judgment on Plaintiffs' Breach of Warranty Claims* [16], subject to its re-urging at a later date.

It is SO ORDERED.

Signed this 28th day of February, 2000.


Thad Heartfield
United States District Judge

¹Additionally, the Plaintiffs have moved this Court under Rule 56(f) of the Federal Rules of Civil Procedure for a reasonable time to obtain additional affidavits and summary judgment evidence. Obviously, this Court GRANTS that motion contained within *Plaintiffs' Response to Compaq's Motion for Summary Judgment on Plaintiffs' Breach of Warranty Claims* [28].